

**RULES
OF
THE GEORGIA COMMISSIONER OF SECURITIES**

**CHAPTER 590-4-2
EXEMPTIONS**

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590-4-2-.01 Federal Covered Security Notice Filing Requirement for Investment Companies.

(1) An issuer of a federal covered security under Section 18(b)(2) of the Securities Act of 1933 (i.e., an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940), that is not otherwise exempt under Sections 10-5-10 through 10-5-12 of the Act, is required to submit a notice filing as set forth in subsection (2) with respect to each security sold before the initial offer of the federal covered security in this state.

(2) Each required notice filing under this Rule shall include the following:

(a) All records that are part of the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.;

(b) A consent to service of process complying with Section 10-5-80 of the Act; and

(c) A non-refundable filing fee of \$250.00.

(3) A notice filing under this Rule is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the Offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission and by paying a renewal fee of \$100.00. A previously filed consent to service of process complying with Section 10-5-80 of the Act may be incorporated by reference in a renewal. A renewed notice filing

becomes effective upon the expiration of the filing being renewed and shall be effective for one (1) year after effectiveness.

(4) This Rule shall apply to all Offerings in which any sale is made within, or to any person in, the State of Georgia on or after the thirtieth (30th) day following the date of adoption hereof.

Authority: O.C.G.A. Secs. 10-5-21, 10-5-70, 10-5-74, 10-5-80.

590-4-2-.02 Federal Covered Security Notice Filing Requirement for Offerings Pursuant to Rule 506.

(1) An issuer of a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933, that is not otherwise exempt under Sections 10-5-10 through 10-5-12 of the Act, is required to submit a notice filing pursuant to subsection (2) hereof not later than fifteen (15) days after the first sale of the federal covered security in this State or the first Business Day following the fifteenth (15th) day after the first sale of the federal covered security in this State if the fifteenth (15th) day is not a Business Day.

(2) Each required notice filing under this Rule shall include the following:

(a) A copy of the most recently filed Form D as filed with the SEC; and

(b) Payment of a non-refundable fee of \$250.00.

(3) The notice filing and fees required by this Rule may be made electronically as permitted by the Commissioner.

(4) This Rule shall apply to all Offerings in which any sale is made within, or to any person in, the State of Georgia on or after the thirtieth (30th) day following the date of adoption hereof.

(5) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of Section 10-5-50 of the Act in view of the objective of this section, and the purposes and policies underlying the Act.

(6) Nothing in this section is intended to relieve broker-dealers or agents from due diligence, suitability, or “know your customer” standards or any other requirements of law otherwise applicable to these persons.

Authority: O.C.G.A. Secs. 10-5-21, 10-5-50, 10-5-74, 10-5-80.

590-4-2-.03 Georgia Uniform Limited Offering Exemption.

(1) Pursuant to the authority delegated to the Commissioner by Section 10-5-12 of the Act, any offer or sale of securities offered or sold in compliance with SEC Rule 505 adopted pursuant to the Securities Act of 1933, including those exempt by application of Rule 508 under the

Securities Act of 1933, that is made in accordance with the conditions and limitations set forth below, is determined to be exempt from the registration provisions of Section 10-5-20 of the Act if:

(a) No commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this State unless the broker-dealer is appropriately registered under the Act. It is a defense to a violation of this subsection if the issuer sustains the burden of proof that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not properly registered;

(b) The issuer shall file with the Commissioner no later than fifteen (15) Business Days after the receipt of consideration or the delivery of a subscription agreement by an investor in this State that is the result of any offer made in reliance upon this exemption:

1. A copy of the most recently filed Form D as filed with the SEC, and
2. A non-refundable filing fee of \$250.00.

(c) In all sales to investors, other than Accredited Investors, in this State, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that one (1) of the following conditions is satisfied:

1. The investment is suitable for the purchaser upon the basis of facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For purposes of this condition only, it may be presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable; or

2. The purchaser, either alone or with his or her Purchaser Representative or representatives, has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment.

(d) A failure to comply with a term, condition, or requirement of subdivisions (a), (b) or (c) will not result in loss of the exemption from the requirements of Section 10-5-20 of the Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

1. The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity;

2. The failure to comply was insignificant with respect to the Offering as a whole; and

3. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subdivisions (a), (b), and (c).

(e) The Commissioner, at his or her discretion, may waive one or more conditions of this Rule if the Commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances.

(2) In the event the Offering is to continue pursuant to this exemption more than twelve (12) months after the date of the initial filing made pursuant to this exemption, then it shall be necessary for the issuer to file a renewal notice on or prior to the one year anniversary of the original filing date, containing a completed SEC Form D and a non-refundable filing fee in the amount of \$100.00.

(3) The filings and fees required by this Rule may be made electronically if permitted by the Commissioner.

(4) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of Section 10-5-50 of the Act in view of the objective of this section, and purposes and policies underlying the Act.

(5) This exemption shall not apply to those transactions offered and sold in reliance upon 506 of SEC Regulation D or any other Offering or security otherwise exempt under Sections 10-5-10 through 10-5-12 of the Act or Rule or Order of the Commissioner.

(6) The exemption authorized by this section shall be known and may be cited as the “Georgia Uniform Limited Offering Exemption” or “Georgia ULOE”.

Authority: O.C.G.A. Secs. 10-5-12, 10-5-70.

590-4-2-.04 Non-issuer Transactions Manual Exemption.

For purposes of exempt non-issuer transactions by or through a broker-dealer registered or exempt from registration under this Chapter, the following securities manuals are designated as nationally recognized securities manuals:

- (a) Standard & Poor’s Standard Corporations Descriptions,
- (b) Best’s Insurance Reports Life-Health;
- (c) Mergent’s Bank and Finance Manual and News Reports;
- (d) Mergent’s Industrial Manual and News Reports;
- (e) Mergent’s Public Utility Manual and News Reports;
- (f) Mergent’s Transportation Manual and News Reports;
- (g) Mergent’s Municipal and Government Manual and News Reports;
- (h) Mergent’s International Manual and News Reports;
- (i) Fitch’s Individual Stock Bulletin; and

(j) Any other securities manual as determined in the discretion of the Commissioner to be a nationally recognized securities manual, which shall require the continuous disclosure by any issuer relying on such manual for the purpose of the registration exemption.

Authority: O.C.G.A. Secs. 10-5-11, 10-5-70.

590-4-2-.05 Nonpublic Offering Exemption.

(1) For purposes of calculating the number of purchasers under Section 10-5-11(14) of the Act, the following rules shall apply:

(a) The following purchasers shall be excluded:

1. Any person related to the purchaser by blood or marriage having the same principal residence as the purchaser.

2. Any trust or estate in which a purchaser and any of the persons related to the purchaser (as specified in clause (1) or (3)) collectively have more than fifty percent (50%) of the beneficial interest (excluding contingent interests).

3. Any corporation or other organization of which a purchaser and any of the persons related to the purchaser (as specified in clause (1) or (2)) collectively are beneficial owners of more than fifty percent (50%) of the equity securities (excluding directors' qualifying shares) or equity interest.

(b) A corporation, partnership, or other entity shall be counted as one (1) purchaser; however, if such entity is organized for the specific purpose of acquiring the securities offered and such entity is not an Accredited Investor, then each beneficial owner of equity securities or equity interests in the entity shall count as separate purchasers for purposes of calculating the number of purchasers pursuant to Section 10-5-11(14) of the Act.

(2) The issuer must satisfy all necessary provisions of Section 10-5-11(14) of the Act for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the purchasers under Section 10-5-11(14) of the Act regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(3) In all Offerings and sales under Section 10-5-11(14) of the Act, the issuer shall make itself available to each purchaser and Purchaser Representative, if any, at a reasonable time prior to the purchase of securities, the opportunity to:

(a) Ask questions and receive answers concerning the terms and conditions of the Offering;

(b) Inspect and copy all material documents relating to the Offering; and

(c) Inspect and copy additional information that the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished in connection with the Offering.

(4) Offers and sales that are exempt under Section 10-5-11(14) of the Act may not be combined with offers and sales exempt under any other section or provision of the Act, provided, however, that this limitation shall not require an issuer to make an election and an issuer failing to satisfy Section 10-5-11(14) of the Act may claim the availability of any other applicable exemption. In any proceeding involving the availability of an exemption under Section 10-5-11(14) of the Act, the burden of proving compliance with the conditions of the exemption is upon the person claiming the exemption.

(5) The exemption provided by Section 10-5-11(14) of the Act is only an exemption for the initial Offering from the registration requirements of Section 10-5-20 of the Act. It is not an exemption for subsequent offers or resales of the securities from the initial Offering.

(6) Section 10-5-11(14) of the Act does not provide an exemption from any section of the Act other than Section 10-5-20 of the Act, including the antifraud and civil liability provisions.

Authority: O.C.G.A. Secs. 10-5-11, 10-5-70.

590-4-2-.06 Disqualification from Use of Exemption.

(1) No exemption under Section 10-5-11(14) of the Act, the Georgia ULOE or the Invest Georgia Exemption shall be available for any Offering if the issuer; any predecessor of the issuer; any affiliate of the issuer; any member of the board of directors, officer, general partner, limited liability company manager or managing member of the issuer; or any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities pursuant to the Offering:

(a) Has filed a registration statement which is the subject of any pending proceeding or examination under Section 8 of the Securities Act of 1933, or has been the subject of any refusal order or stop order thereunder within five (5) years prior to the Offering;

(b) Is subject to any pending proceeding under SEC Rule 258 promulgated under the Securities Act of 1933, or any similar section adopted under Section 3(b) of the Securities Act of 1933, or to an order entered thereunder within five (5) years prior to the Offering;

(c) Has been convicted within five (5) years prior to the Offering of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security;

(d) Is subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority (including non-U.S. regulatory authorities) temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction or regulatory authority entered within five (5) years prior to the Offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or

practice in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security; or

(e) Is subject to a United States Postal Service false representation order entered under § 39 U.S.C. 3005 within five (5) years prior to the Offering, or is subject to a temporary restraining order or preliminary injunction entered under § 39 U.S.C. 3007 with respect to conduct alleged to have violated § 39 U.S.C. 3005.

(2) Paragraph (1) of this section shall not apply:

(a) Upon a showing of good cause and without prejudice to any other action by the Commissioner, if the Commissioner determines that it is not necessary under the circumstances that an exemption be denied; and

(b) If the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under paragraph (1) of this section. An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(3) This Rule shall apply to all Offerings in which any sale is made within, or to any person in, the State of Georgia on or after the thirtieth (30th) day following the date of adoption hereof.

(4) For purposes of paragraph (a) of this Section, events relating to any Affiliate Of the issuer that occurred before the affiliation arose will not be considered disqualifying if the affiliated entity is not:

(a) In control of the issuer; or

(b) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

Authority: O.C.G.A. Secs. 10-5-11, 10-5-13, 10-5-70.

590-4-2-.07 Not-For-Profit Securities Registration.

(1) With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 10-5-10(7) of the Act shall file a notice as set forth in subsections (2) below with the Secretary of State at least ten (10) full business days prior to the first offer of sale pursuant to such claim. Such exemption shall become effective ten (10) full business days after the filing of a complete notice if the Secretary of State has not disallowed the exemption.

(2) The notice required in this Rule shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following:

- (a) The identity of the issuer;
 - (b) The amount and type of securities to be sold pursuant to the exemption;
 - (c) A description of the use of the proceeds of the Offering;
 - (d) The person or persons by whom the offers and sales will be made;
 - (e) The offering statement, if any; and
 - (f) A consent to service of process complying with Section 10-5-80 of the Act.
- (3) All proposed Sales and Advertising Literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Secretary of State only upon request.
- (4) The Statements of Policy regarding Church Bonds adopted by NASAA on April 14, 2002 (available at http://www.nasaa.org/wp-content/uploads/2011/07/40-Church_Bonds.pdf), and the Statement of Policy regarding Church Extension Fund Securities adopted by NASAA on April 17, 1994, and amended on April 18, 2004, (available at http://www.nasaa.org/wp-content/uploads/2011/07/39-Church_Extension_Fund_Securities.pdf) shall be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this Rule. Failure to comply with the provisions of an applicable Statement of Policy promulgated by NASAA shall serve as the grounds for disallowance of the exemption from registration provided by Section 10-5-10(7) of the Act.
- (5) The Commissioner may also waive any term or condition set forth in this Rule.
- (6) The Commissioner may by Order set forth certain requirements for the escrow of proceeds in any Offering under this Rule.

Authority: O.C.G.A. Secs. 10-5-10(7), 10-5-70.

590-4-2-.08 Invest Georgia Exemption.

(1) The offer or sale of a security by an issuer shall be exempt from the requirements of Article 3 and Section 10-5-53 of the Act, and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of Section 10-5-30, if the offer or sale is conducted in accordance with each of the following requirements:

(a) The issuer of the security shall be a for-profit business entity formed under the laws of the state of Georgia and registered with the Secretary of State.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147.

(c) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(d) The issuer shall not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501.

(e) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Georgia, and all the funds shall be used in accordance with representations made to investors.

(f) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

1. The issuer;
2. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
3. The bank or other depository institution in which investor funds will be deposited.

(g) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(h) The issuer shall inform all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on resales contained in subsection (e) of SEC Rule 147, 17 C.F.R. 230.147(e).

(2) Offers and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these rules or the Act, except for offers and sales to the following persons, who shall not count toward the limitation in paragraph (1)(c):

(a) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(b) A person owning 10 percent or more of the outstanding shares of any class or classes of securities

(3) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in Rule 590-4-2-.06.

(4) The exemption authorized by this section shall be known and may be cited as the “Invest Georgia Exemption.”

(5) "Individual," for the purpose of paragraph (1) of this Rule, means a natural person residing in the State of Georgia, or a corporation, trust, partnership, association, or any other legal entity duly organized under the laws of the State of Georgia, that does not:

- (a) offer investment advice or recommendations;
- (b) solicit purchases, sales, or offers to purchase the securities exempted by this Rule;
- (c) compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted by this Rule; or
- (d) take custody of investor funds or securities.

Authority: O.C.G.A. Secs. 10-5-3, 10-5-10, 10-5-11, 10-5-12, 10-5-30(b)(1)(H), 10-5-70.